

**CHARTER REVIEW COMMISSION**  
**Wednesday, November 12, 2008**  
**6th Floor Conference Room**  
**Council Office Building**

**Commission Members Present:**

Nancy Soreng, Chair  
Alice Gresham Bullock, Vice-Chair  
Michael Cogan  
Karen Czapanskiy  
Wilbur Friedman  
Mollie Habermeier  
Robert Shoenberg  
Anne Marie Vassallo  
Charles Wolff

**Staff:**

Justina Ferber, County Council  
Scott Foncannon, County Attorney's Office  
Marc Hansen, County Attorney's Office  
Marie Jean-Paul, County Council  
Amanda Mihill, County Council  
Glenn Orlin, County Council

**Commission Members Absent:**

Judith Vandegriff\*

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Commission Chair Nancy Soreng began the meeting at 8:05 a.m.

**I. Special Taxing Districts**

The Commission continued its discussion of whether to recommend excluding certain special taxing districts from the Charter's limit on the growth of the property tax revenue to the rate of inflation (Charter §305).

The Commission received a briefing from Marc Hansen and Scott Foncannon from the County Attorney's Office. Mr. Foncannon's presentation will be made part of the meeting minutes.

Commission members discussed development districts and learned that there are 3 development districts in the County (the County has issued bonds for 2 development districts, but not a third). Commissioners learned that development district bonds are not backed by the full faith and credit of the County or the County tax base like general obligation bonds, but are backed by the development district tax. Revenue generated from special taxing districts cannot be used to pay the general obligation debt.

Commissioners questioned whether the County can unilaterally create a special taxing district and learned that in some instances, the County can. However, Commissioners learned that development districts require approval from 80% of property owners in the proposed district, but at the time the development district is created, the developer is usually the sole owner. Commissioners also learned that the creation of a noise abatement district requires the approval of 60% of affected homeowners per the Highway Noise Abatement Policy (amended Aug. 2006).

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\* Ms. Vandegriff did not attend the meeting due to a family illness.

Some Commission members were concerned about how well received an amendment to remove these special taxing districts from the Charter §305 property tax cap would be by the voters, particularly in light of the recent passage of the Charter amendment to require a unanimous vote to override that cap. Commissioners discussed that the 1990 “tax revolt” that resulted in the property tax cap in §305 was primarily about residential taxes and this amendment would be primarily about commercial taxes (revenue from development district taxes are already excluded from the §305 cap). Commission members discussed that if the Commission recommended this Charter amendment, a campaign may be helpful to educate the voters on special taxing districts and how revenue generated by and for them is different than the revenue generated by residential property taxes in order to help them better understand the implications of the amendment.

Commission members requested that Council staff provide them with the following additional information:

- What is the percentage of total collections that is derived from the special taxing districts?
- What percentage of the annual budget is funded by property tax revenues?
- If special taxing districts were removed from the Charter §305 property tax cap, how would that affect property owners that are outside special taxing districts.

## **II. Administrative Items**

### **A. Draft Report on the Inspector General**

The Commission had before it a draft report on the issue of whether to amend the Charter to provide for an Executive-nominated, Council-confirmed Inspector General, which will be made part of the meeting minutes. Chair Soreng noted that the draft report was intended only to memorialize where the Commission stood at this point with the information that was available, but did not bar a reconsideration of this issue prior to the 2010 report.

A motion was made to amend the footnote in the draft report to read: “Regarding access to records, there was some concern that the Inspector General has been constrained in the ability to obtain information from bi-county and state agencies such as Montgomery County Public Schools, Washington Suburban Sanitary Commission and the Maryland National Capital Park and Planning Commission. However, this is not a Charter issue.” Motion made by Charles Wolff and seconded by Alice Gresham Bullock.

A substitute motion was made to delete the last sentence in the footnote that reads “The solution to this problem requires a change in State law.” Substitute motion made by Michael Cogan and seconded by Mollie Habermeier.

In favor: Michael Cogan, Wilbur Friedman, Mollie Habermeier (3)

Against: Alice Gresham Bullock, Karen Czapanskiy, Robert Shoenberg, Nancy Soreng, Anne Marie Vassallo, Charles Wolff (6)

Adopted the original motion.

In favor: Alice Gresham Bullock, Karen Czapanskiy, Wilbur Friedman, Robert Shoenberg, Nancy Soreng, Anne Marie Vassallo, Charles Wolff (7)

Abstain: Michael Cogan, Mollie Habermeier (2)

**B. Approval of October 15 minutes**

Approved the October 15 minutes with the following corrections:

- Replace the sentence in the second paragraph on Page 2 that reads “The IG did not believe that the current funding process for his Office has had any impact on its independence” with “The IG believes that a change in the appointment process would not necessarily improve any effect of the current funding process on the independence of the IG.”
- Ensure that the minutes do not contain gender-specific pronouns.

In favor: Alice Gresham Bullock, Karen Czapanskiy, Wilbur Friedman, Mollie Habermeier, Robert Shoenberg, Nancy Soreng, Anne Marie Vassallo, Charles Wolff (8)

Abstain: Michael Cogan (1)

Mr. Cogan requested that the minutes reflect when a Commission members misses a meeting due to illness or other reason.

The meeting was adjourned at 9:40 a.m.

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Isiah Leggett  
*County Executive*

OFFICE OF THE COUNTY ATTORNEY

Leon Rodriguez  
*County Attorney*

MEMORANDUM

FROM: Scott R. Foncannon  
Associate County Attorney

DATE: November 12, 2008

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**Form of Government/Taxation**

Montgomery County, as you know, is a charter home rule County, having adopted a charter form of government as provided in Article 11A of the Maryland Constitution.

The provisions of Article 11A share certain powers of self government with Charter County's that were otherwise reserved to the State. The constitution requires the State to grant Charter County's certain express powers and giving those County's the power to enact local laws on all matters covered by these powers.

The General Assembly as required by the Constitution set out the express powers in the Express Powers Act – Article 25A § 5 of the Maryland Annotated Code. These powers include a variety of legislative and administrative powers over local affairs.

Taxation was one of the areas specifically addressed by the Express Power Act in § 5 (O). This section authorizes the County to levy a tax on land and personal property upon its value, necessary to pay and discharge principle and interest of any loan and to pay such sums as may be necessary for the support and maintenance of County government. This section also states that the County may

“establish, modify, amend and abolish special taxing areas for any of the purposes enumerated in this article.”

The power to tax is not inherent in the County, but is a delegated power by the State. This express grant of taxing authority is not a general taxing authority but its property tax only.

In 1963 the General Assembly further granted Montgomery County, general taxing authority, in addition to any other taxing authority and stated “the power to tax to the same extent as the State has or would exercise said power within the limits of the County as part of its general taxing authority.”

### **Limitations on the Power to Tax.**

Article 15 of the Constitution which applies to property tax, provides some limitation on the authority of the County to tax and requires that the tax must

- 1) be for public purpose; and
- 2) must be equal and uniform and according to actual value within each class or subclass of land.

This means that the tax should be uniform according to the value of the land and the same rate for all affected by the tax. That means with a uniformity of the assessment and the tax rate.

The County has set up several special taxing districts or areas in the County and within the bills that create these special districts the County specifically describes the area to be effected, and outlines the purpose for which the tax is imposed. On an annual basis the Council sets the rate for the tax which will be sufficient to pay the debt and operate the special taxing area.

These special taxing area's include; Noise abatement Dist., Urban Districts, Parking Lot Districts, Storm Drainage District, Recreation District, Fire District, and Transit District.

There are also other Special Taxing Districts in the County such as Friendship Heights, Battery Park and Oakmont. These are created by the General Assembly and have authority to govern themselves. These are not county special taxing area's under County law and the County only collects the tax and pays it over to them.

The revenue generated by these special taxing areas are not part of the general fund. They account for about .33% of the total tax in the County.

### **Impact Tax**

Impact Tax is an excised tax imposed County wide on the privilege of conducting development within the County. Development is described as any building activity or material change in use of a structure or land that requires a building permit and creates additional dwelling units or gross floor area of non-residential development. The purpose of the impact tax is to generate revenue that can be used to build transportation facilities in areas where transportation facilities are impacted by development. As you know, development as defined by the Code, creates trips and traffic that impact transportation infrastructure and in an effort to keep pace with development and to generate revenue to build new transportation infrastructure the impact tax was passed back in 1986, but only effected several small areas of the County and in 2002 the County Council expanded the impact tax area to include the entire County.

The impact tax is an excise tax and not a property tax. It is based on a per dwelling unit or per square foot of gross floor area calculation and it is not an advalorem tax based on the value of land. You only owe the tax if you engage in development in the County. The impact tax was authorized under the general taxing authority of § 52-17 of the Montgomery County Code.

### **Development Districts**

Development districts are defined and described in Chapter 14 of the Montgomery County Code and is a financing tool to assist developers and the County in financing certain infrastructure within a particular defined area. In these areas defined as a development district, special assessments and special taxes are levied to repay bonds or other obligations sold by the County to generate the funds for construction of the infrastructure. Development districts were particularly useful at a time when interest rates paid by developers to commercial banks were very high and it was believed that the County could borrow money at a lower rate to build the infrastructure. This process also allowed certain infrastructure improvements, including transportation facilities to be built sooner rather than later, to allow development to go forward more quickly.

These special assessments or taxes are advalorem taxes applicable to everyone within the district based on the full cash value of your property and are for a limited period of time very similar to a front foot benefit charge for installation of water and sewer facilities. Once the bonds and debt obligations have been paid in full the development district tax ends.

Again these are not part of the general fund and are used to may the debt of the development district.

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A08-02166 – Memo to File  
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## **Appointment of the Inspector General**

(Draft for May 2010 Charter Review Commission Report)

The May, 2008 Report of the Charter Review Commission included a discussion of whether the Commission should recommend a Charter amendment to include the Inspector General as an entity in the Executive Branch who would be nominated by the County Executive and confirmed by the Council. That report reviewed the history of the Office and described the research that the Commission conducted up to the time the report was submitted. At that time, Commission members felt that there were several issues that still needed to be considered before making a recommendation on the matter, including:

- **Independence:** In the initial establishment of the Office of Inspector General, the independence of the IG was considered to be critical. Would an IG appointed by any County Executive, rather than the Council, be as independent?
- **Funding:** How would funding for the office be affected by a change in structure? Would the independence of the office be impacted by which branch allocates funding?
- **IG Access:** Would an IG appointed by the County Executive have the same access to departments and agencies, staff and records as under the current arrangement? Would subpoena power be needed or appropriate?<sup>†</sup>

In addition, the Commission agreed that prior to recommending a change in the appointment process, additional research into other local Offices of Inspectors General could be helpful in addressing some of these issues.

Between April and October of 2008, Commissioners interviewed the Director of the Office of Legislative Oversight and the Montgomery County Inspector General, conducted research on the internet and held a public forum to seek input on the questions before them. Commissioners learned that there are only about 12 counties in the nation that have Inspectors General. Among those counties, there is not a universal pattern of authorization, funding, appointment, or scope of responsibility. They also learned that in Montgomery County, the Inspector General has broader jurisdiction to examine complaints of fraud, waste and abuse across county government agencies, than the several Inspectors General within the Maryland state government where they are department specific. Therefore, the Commissioners decided to focus their decision on what is or is not working in Montgomery County, Maryland.

The consensus of those interviewed by the Commission and those who testified at the public forum is that the Office of Inspector General enjoys a great deal of independence and the results produced by that Office are not being compromised by the current structure. The current system for funding the Office also seems to provide adequate controls for maintaining independence.

The Commission also discussed the reappointment process. Some Commissioners were concerned that a change in the reappointment process could affect the independence of the Office. If the County Executive was responsible for reappointment, it could be difficult for an

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<sup>†</sup> Regarding access to records, there was some concern that the Inspector General may be constrained in the ability to seek information from bi-county and state agencies such as Montgomery County Public Schools, Washington Suburban Sanitary Commission and the Maryland National Capital Park and Planning Commission. The solution to this problem requires a change in State law.



Executive to be objective about the person in an Office who has produced, and released to the public, reports that are critical about activities under the oversight of the Executive Branch.

In October, 2008, Commissioners voted 8-0 (2 Commissioners absent and one position vacant) to recommend against amending the Charter to provide for an Executive-nominated, Council-confirmed Inspector General.